380.

SUPREME COURT OF THE UNITED STATES.

No. 186.

HENRY WEBSTER, PLAINTIFF,

vs.

PETER COOPER.

ON A CERTIFICATE OF DIVISION IN OPINION FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MAINE.

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Circuit court of the United States. October term, 1847.

MAINE DISTRICT, *ss:*

HENRY WEBSTER
vs.
PETER COOPER.

This is a writ containing a plea of land, dated the fourteenth of April, 1846, a copy of which writ is made a part of this case (A) in which the demandant seeks to recover a parcel of land, situated in Pittston, in the county of Kennebec, in the State of Maine, of which he claims to have been seized in his demesne as of fee in tail and remainder within twenty years, and complains of a disseizing by this defendant.

The general issue was pleaded and joined. There was also a request filed on the part of the defendant, that the jury should, by their verdict, find and return the increased value of the premises by reason of the buildings and improvements erected and made by him, and those under whom he claims; and a request on the part of the plaintiff, that the jury should also estimate in said verdict and return what would have been the value of the premises at the time of trial, provided no buildings had been erected, or improvements made, or waste committed. A copy of the request and of the sections of the statute on which it is founded is annexed, (B.)

And it is agreed by the parties that the following statement of facts is true, namely, that the demanded premises belonged to the proprietors of the Kennebec purchase, and were by them duly granted and assigned to Florentius Vassall, one of the proprietors in fee, in the year 1756, being included in the grant recorded in the records of the proprietary.

That Florentius Vassal made his will September 20th, 1777, and died at London, 1778, seized of the lands in question, they then being unoccupied wild lands. The will was afterwards duly proved in the prerogative court of Canterbury, September 14, 1778, a copy of which will, with its explifications, has been duly filed and recorded in the probate office for the county of Kennebec; which will was offered in evidence as copied, and makes a part of this case, (C.)

Richard Vassall, named in the will, died about 1795, leaving only one child, Elizabeth Vassall, who married Sir Godfrey Webster, deceased, about the first day of January, 1793, by whom she had issue two sons, namely, Sir Godfrey Vassall Webster, who died in the lifetime of said Elizabeth, without issue, and Henry Webster, the demandant. Said Elizabeth afterwards, namely, in January, 1796, was legally divorced from her husband, the said Sir Godfrey Webster, and on the first day of July, 1797, she was legally joined in marriage with Richard Henry Fox, afterwards Lord Holland, by whom she had issue one son, Henry Edward Fox, who is now living. All charges upon the

land devised have been satisfied, and they are not now subject to any life estate, estate for years, or outstanding terms, under the will. Said Lord Holland died on the 1841. Said Lady Holland died in the fall of the year 1845. The persons named in said will as devisees in remainder, after the failure of the issue of said Elizabeth, or their lineal descendants, are now living in England, as is the said Henry Edward Fox, son of said Elizabeth. That said Florentius Vassall was, at the time of said grant, a resident in Boston, State of Massachusetts; that he, on or before the year 1775, left his said residence, went to England, and never returned; and that neither he, nor any of the devisees named in said will, have ever resided within the limits of the United States since that time. The premises demanded, being the matter in dispute, are of greater value than two thousand dollars.

The tenant, and those from whom he legally derives title to said demanded premises, have been in the quiet, undisturbed, open, notorious, and exclusive possession and occupation of said premises for and during the term of fifty years next preceding the commencement of this action, he and they claiming to hold the same adversely to any claim of said demandant, or any other person, as his and their own property in fee simple.

For plaintiff, C. S. & E. H. DAVEIS.
For tenant, FREDERICK ALLEN, and
FESSENDEN, DEBLOIS & FESSENDEN.

A.

FIRST CIRCUIT OF THE UNITED STATES,
District of Maine, ss:

The President of the United States of America, to the marshal of our district of Maine, or his deputy, greeting:

[L. S.]

We command you to attach the goods or estate of Peter Cooper, of Pittston, in the county of Kennebec, in said State of Maine, yeoman, a citizen of said State of Maine, to the value of three thousand dollars, and summon the said Peter Cooper (if he may be found in your precinct) to appear before our circuit court, next to be holden at Portland, within and for our district of Maine, on the first day of May next, then and there, in our said court, to answer unto Henry Webster, of the parish of St. George, in the county of Middlesex, in England, esquire, an alien subject of the United Kingdom of Great Britain and Ireland, in a plea of land, wherein he demands against the said Cooper a certain piece or parcel of land, situate in said Pittston, and being part of the great five-mile lot No. seventeen (17,) so called, bounded easterly by Eastern river, northerly by land occupied by Richard Call, west by land occupied by one Haley and a lot in possession of one Bliss, being about four hundred rods west from Eastern river, and south by land occupied by Elizabeth Call, and the north line thereof extended westerly about four hundred rods from said river, containing about one hundred acres; also another lot adjoining the same, bounded west by land in

possession of one Harhome, south by the river line, east by land occupied by Elizabeth Call and Alfred Stephens and Rice Plummer, north by said first described piece, containing about one hundred acres; of which said pieces and parcels the said Cooper disseized him within twenty years last past, as it is said; whereupon, the said demandant says, that within twenty years last past he was seized of the said pieces and parcels of land in his demesne as of fee in tail and remainder, and of which the said Cooper disseized him as aforesaid, and still unjustly withholds, to the damage of the said plaintiff, (as he says,) the sum of three thousand dollars, which shall then and there be made to appear, with other due damages. We command you, therefore, that you summon the said Cooper, if he may be found in your precinct, to appear before our said court, as aforesaid, and have you there this writ, with your doings therein.

Witness the honorable Roger B. Taney, at Portland, the fourteenth day of April, in the year of our Lord one thousand eight hundred and forty-six.

J. MUSSEY, *Clerk*.

April 17th, 1846.

MAINE DISTRICT, *ss:*

By virtue of this precept, I have made service on the within named defendant, by leaving at his last and usual place of abode an attested copy of this writ.

NICHOLAS NICHOLLS,
Deputy Marshal.

B.

Circuit court of the United States, Maine district, October term, 1847.

HENRY WEBSTER
vs.
PETER COOPER.

And now the said Cooper comes and defends, when, &c., where, &c., and for plea says, he never disseized the plaintiff in manner and form as the plaintiff in his writ and declaration hath alleged, and of this puts himself on the country, by his attorneys,

FREDERICK ALLEN & SAMUEL FESSENDEN.

And the demandant doth the like, by—

C. S. & E. H. DAVEIS,
Their Attorneys.

And if the jury shall by their verdict find that said Cooper did disseize the plaintiff in manner and form as the plaintiff hath alleged, then the said Cooper and those under whom he claims having been in possession of the premises demanded in the plaintiff's writ for six years and more, before the commencement of the action aforesaid, he, the said Cooper, requests the jury to ascertain, and by their verdict find, and state the same in their said verdict to the court, the increased value of the said

premises by reason of the buildings and improvements placed and made on the said premises by the said Cooper, and those under whom he claims.

By his attorneys:

FREDERICK ALLEN & SAMUEL FESSENDEN.

And the demandant requests the jury to estimate, and by their verdict find, and state what would have been the value of the premises at the time of trial, provided no buildings had been erected, or improvements made, or waste committed thereon.

By C. S. & E. H. DAVEIS,
His Attorneys.

An act for the limitation of real actions.

Sect. 1. Be it enacted by the Senate and House of Representatives in general court assembled, and by the authority of the same, That no person shall hereafter sue or maintain any writ of right, or make any prescription title or claim to any lands, tenements, or hereditaments, or to any rents, annuities, or portions issuing therefrom, upon the possession or seizen of his or their ancestor or predecessor, beyond the term of three-score years next before the teste of the same writ.

Sect. 2. And be it further enacted by the authority aforesaid, That no person shall sue, have, or maintain any writ of entry upon disseizen done to any of his ancestors or predecessors, or any action possessory upon the possession of any of his ancestors or predecessors, for any lands, tenements, or hereditaments, unless the ancestor or predecessor under whom the demandant shall claim, should have been seized or possessed of the lands, tenements, or hereditaments demanded within fifty years next before the teste of the same writ, or bringing such action.

Sect. 3. And be it further enacted by the authority aforesaid, That no person or body, corporate or politic, shall sue for, have, or maintain any action for any lands, tenements, or hereditaments, upon his or their own seizen or possession therein, above thirty years next before the teste of the same writ.

Sect. 4. And be it further enacted by the authority aforesaid, That all writs of formedon in defender, formedon in remainder, formedon in reverter, of any lands, tenements, or hereditaments whatsoever, hereafter to be sued or brought, shall be commenced within twenty years next after the title or cause of action first descended, and at no time after the said twenty years. And no person, unless by judgment of law, shall at any time hereafter make any entry into any lands, tenements, or hereditaments, but within twenty years next after his right or title first descended or accrued to the same; and in default thereof such person so not entering, and his heirs, shall be utterly excluded and disabled from making such entry thereunto; provided, always, that when any person that is or shall be entitled to any of the writs of formedon aforesaid, or to make an entry into lands, tenements, or hereditaments, shall, at the time the said right or title first descended, accrued, or fell, be within the age of twenty-one years, feme covert, non compos, imprisoned, or beyond seas,

or without the limits of the United States, that then such person shall and may bring such suit, or make such entry at any time within ten years after the expiration of the said twenty years aforesaid, and not afterwards.

(This act passed July 4, 1786.)

CHAPTER 147.

Of limitations of real actions and of rights of entry.

Section 1. No person shall commence any real or mixed action for the recovery of lands, or make an entry thereon, unless within twenty years after the right to make such entry, or bring such action first accrued, or within twenty years after he, or those under or from whom he claims, shall have been seized or possessed of the premises, except as hereinafter provided.

Sect. 2. If such right or title first accrued to an ancestor or predecessor of the person who brings the action, or makes the entry, or to any other person from. by, or under whom he claims, the said twenty years shall be computed from the time when the right or title so first accrued to such ancestor, predecessor, or other person.

Sect. 3. In the construction of this chapter, the right of entry, or of action to recover land, shall be deemed to have first accrued at the respective times hereinafter mentioned.

First. When a person shall be disseized, his right of entry shall be deemed to have accrued at the time of such disseizing.

Second. When he claims as heir or devisee of one who died seized, his right shall be deemed to have accrued at the time of such death, unless there is a tenancy, by the curtesy or other estate, intervening after the death of such ancestor or devisor; in which case his right shall be deemed to accrue when such intermediate estate shall expire, or when it would have expired by its own limitation.

Third. When there is such an intermediate estate, and in all cases when the party claims by force of any remainder or reversion, his right, so far as it is affected by the limitation herein prescribed, shall be deemed to accrue when the intermediate estate would have expired by its own limitation, notwithstanding any forfeiture thereof, for which he might have entered at an earlier time.

Sect. 4. The preceding clause shall not prevent any person from entering, when entitled to do so, by reason of any forfeiture or breach of condition; but, if he claims under such a title, his right shall be deemed to have accrued when the forfeiture was incurred, or the condition broken.

Sect. 5. In all cases not specially provided for, the right of entry shall be deemed to have accrued when the claimant, or the person under whom he claims, first became entitled to the possession of the premises under the title upon which the entry or action is founded.

Sect. 7. If at the time when such right of entry, or of action upon or for any lands shall first accrue, the person entitled to such entry or action shall be within the age of twenty-one years, or a married woman,

insane, imprisoned, or absent from the United States, such person, or any one claiming from, by, or under him, may make the entry or bring the action at any time within ten years after such disability shall be removed, notwithstanding the twenty years before limited in that behalf shall have expired.

Sec. 9. When a tenant in tail, or a remainder man in tail, shall die, before the expiration of the period hereinbefore limited for making any entry or bringing an action for lands, no person claiming any estate which such tenant in tail or remainder man might have barred, shall make an entry, or bring an action, to recover such land, but within the period during which the tenant in tail or remainder man, if he had so long lived, might have made such entry, or brought such action.

Sec. 10. The limitations hereinbefore prescribed, as to the time within which an action may be brought to recover any land, shall take effect from and after the first day of April, in the year one thousand eight hundred and forty-three; and, if any person who shall then be entitled to bring any real action, which is to be abolished after that day as is mentioned in chapter one hundred and forty-five, shall then be within the age of twenty-one years, a married woman, insane, imprisoned, or without the limits of the United States, the action may be brought at any time within five years after such disability shall cease, or after the death of the person so disabled; provided, that no such action shall be maintained, after it would have been barred by the statute of limitation in force, and immediately before the time when this chapter shall become a law.

Sec. 11. To constitute a disseizin, or such exclusive and adversary possession of lands, as to bar or limit the right of the true owner thereof to recover the same, it shall not be necessary that such lands shall be surrendered with fences, or rendered inaccessible by water; but it shall be sufficient, if the possession, occupation, and improvement are open and notorious, and comporting with the ordinary management of a farm; although that part of the same which composes the woodland belonging to such farm, and used therewith as a wood lot, shall not be enclosed as before mentioned.

Chapter 145.

Of real actions.

Sec. 23. When the demanded premises have been in the actual possession of the tenant, or those under whom he claims, for six successive years or more, before commencement of the action, such tenant shall be allowed a compensation for the value of any buildings and improvements on the premises made by him or those under whom he claims, to be ascertained and adjusted in the manner hereinafter provided.

Sec. 27. The tenant may file a claim in writing to compensation for buildings and improvements on the premises, and a request for an estimation, by the jury, of the increased value of the premises by reason thereof; and the demandant may file a request in writing, that the jury

would also estimate what would have been the value of the premises, at the time of trial, provided no buildings had been erected, or improvements made, or waste committed; both which estimates it shall be their duty to make, and in their verdict state to the court.

Sec. 46. If the demandant, in a writ of entry, shall claim an estate for life only, in the premises, and if he shall pay any sum allowed to the tenant for improvements, he or his executors or administrators, at the termination of his estate, shall be entitled to receive of the remainder man or reversioner, the value of such improvements as they then exist; and shall have a lien therefor on the premises in like manner as if they had been mortgaged for payment thereof; and he may keep possession thereof accordingly till the same be paid; and, if the parties cannot agree on the then existing value, it may be settled in the same manner, as in case of the redemption of mortgaged property.

CHAPTER 91.

Conveyances.

Sec. 6. Any person actually seized of lands, as tenant in tail, may convey the same in fee simple; and such conveyance shall bar the estate tail, and all the remainders and reversions expectant thereon.

To the honorable Henry W. Fuller, judge of probate, in and for the county of Kennebec, in the State of Maine.

Respectfully sheweth, William H. Gardiner, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, esquire, for himself, and as the attorney of Henry Webster, of the county of Middlesex, in England, that Florentius Vassall was formerly a subject and an inhabitant of the kingdom of Great Britain, and resided in England, in said Great Britain, when he died, and that he then and there left a last will and testament, which after his death was duly proved and allowed in the prerogative court of Canterbury, a court of probate in said England, pursuant to the laws of said England, and of said kingdom of Great Britain; and a copy of the said will, with a copy of the probate thereof, under the seal of said prerogative court of Canterbury, which was and is a court of probate in said England, is now herewith produced.

That said Webster is a devisee under said will, and by and from a devisee under the same, is a grantee of estates devised by said will; and that said Florentius, the testator, had estate, real and personal, in said county of Kennebec, whereon the said will may operate, and that said Gardiner is interested therein.

And now, the said Gardiner desires that the same may be filed and recorded in the probate office in said county of Kennebec, pursuant to the statute and laws in that case made and provided, and that administration of the estate of said deceased within this State, with the will annexed, may be granted unto him, the said Gardiner, and that such other proceedings may be had in the premises as the law directs.

Dated at Augusta, this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and thirty-seven.

W. H. GARDINER.

STATE OF MAINE, *Kennebec, ss:*

At a probate court held at Augusta in said county, on the second Monday of May, (being the eighth day of said month,) in the year of our Lord one thousand eight hundred and thirty-seven.

Whereas William H. Gardiner, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, esquire, hath presented to me, judge of said court, the foregoing petition, and hath produced to me a copy of the will therein mentioned, with a copy of the probate thereof, pursuant to the laws of said England, under the seal of the prerogative court of Canterbury, a court of probate in said England, where said will has been proved and allowed, and hath in writing desired that the same may be filed and recorded in the probate office in the same county of Kennebec, pursuant to the statute in such case made and provided.

I do therefore order that the same be taken into consideration at a probate court to be held at the probate office in said Augusta, on the last Monday of June next, at ten of the clock in the forenoon, and that said Gardiner give public notice thereof by causing a copy of said petition, with this order thereon, to be published three weeks successively in the Age, a public newspaper printed in said Augusta, thirty days at least before the said last Monday of June next, the time assigned as aforesaid, to the end that any person may appear and show cause against the filing and recording the said copy, and granting administration upon the estate of said deceased, as aforesaid, with the will annexed.

Given under my hand, at Augusta, the day and year first above mentioned.

H. W. FULLER, *Judge*.

STATE OF MAINE, *Kennebec, ss:*

At a probate court held at Augusta, in said county, on the last Monday of June, in the year of our Lord one thousand eight hundred and thirty-seven.

William H. Gardiner, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, esquire, for himself, and as the attorney of Henry Webster, of the county of Middlesex, in England, having given public notice in pursuance of my order, which is now on file in said court, that the petition for filing and recording a copy of the will of Florentius Vassall, formerly of Great Britain, deceased, with a copy of the probate thereof, would be acted upon here this day, being the time and place assigned for taking the same into consideration, and having produced before me a copy of the said will and of the probate thereof, duly authenticated under the seal of the prerogative court of Canterbury, in said Great Britain, where the said will had been proved and allowed according to the laws of Great Britain, and having produced to me satisfactory evidence that he is interested therein, and that there is real estate within the said county of Kennebec, whereon the said will may

operate, and having heard divers persons opposed to the prayer of said petition, who appeared, as well by themselves as by R. H. Vose, esq'r, their attorney, and no sufficient objection being made to the filing and recording of said copy of the will aforesaid, as prayed for:

I do therefore decree, that the said copy of the will of Florentius Vassall, with the copy of the probate thereof, be filed and recorded in the probate office of said county of Kennebec, pursuant to the statute in that case made and provided. And it not evidently appearing that there is any personal estate of said deceased in said county of Kennebec, administration of the estate of said deceased is not granted.

H. W. FULLER, *Judge of probate.*

Attest, GEO. ROBINSON, *Register.*

To all and singular the faithful in Christ, to whom these our present letters testimonial shall come, or whom the matters herein written do or may hereafter in any wise concern, William, by divine Providence archbishop of Canterbury, primate of all England and metropolitan, send greeting in our Lord God everlasting, and will that undoubted faith be given to these presents, and do make known and will that it be hereby made known to you, that on searching the registry of our prerogative court of Canterbury, in the archives thereof, there well and faithfully preserved and kept, we have found, among other things in the same, that on the fourteenth day of September, in the year of our Lord one thousand seven hundred and seventy-eight, at London, administration, with the will annexed, of all and singular the goods, chattels, and credits, of Florentius Vassall, formerly of the parish of Saint Marylebone, in the county of Middlesex, but late of the Island of Jamaica, esquire, deceased, having, whilst living, and at the time of his death, goods, chattels, or credits, in divers dioceses or jurisdictions, sufficient to found the jurisdiction of our prerogative court of Canterbury aforesaid, was granted to Richard Vassall, esquire, the son of the said deceased, and the residuary legatee named in the said will, he having been already sworn well and faithfully to administer the same, and to make a true and perfect inventory of all and singular the said goods, chattels, and credits, and to exhibit the same into the registry of our said court, on or before the last day of March next ensuing, and also to render a just and true account thereof; the right honorable Hugh, lord viscount Falmouth, the right honorable William Wildman, lord viscount Barrington, and Charles Spooner, esquire, executors named in the said will, having renounced the probate and execution thereof; which said will, and also an affidavit of Thomas Goostrey, follow in these words:

This is the last will and testament of me, Florentius Vassall, late of the Island of Jamaica, in the West Indies, but now of Wimpole street, in the parish of Saint Marylebone, in the county of Middlesex, and kingdom of Great Britain, esquire, made this twentieth day of September, in the year of our Lord one thousand seven hundred and seventy-seven.

I desire my remains may be deposited in the vault I have lately mad

in the church-yard in Saint Marylebone, where my late wife is buried. And as to all my estate and effects whatsoever, I dispose thereof as follows, that is to say, I give and devise all those my several plantations in the parish of Westmoreland, in the county of Cornwall, in the said Island of Jamaica, commonly called or known by the several names of Friendship, Greenwich, and Sweet River plantations; and all and every the buildings, lands, tenements, and appurtenances, negro and other slaves, cattle, utensils, and stock, whatsoever, which now are, or shall at the time of my decease be therewith severally used, or thereto respectively belonging; and also all my lands, tenements, and hereditaments, whatsoever, situate and being in New England, in North America, and all my estate, right, and interest therein respectively, unto the right honorable Hugh, lord viscount Falmouth, the right honorable William Wildman, lord viscount Barrington, in the kingdom of Ireland, and Charles Spooner, of the parish of Saint George, Hanover square, in the county of Middlesex, esquire, and their heirs, to the uses, upon the trusts, and for the intents and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter limited, declared, and expressed of or concerning the same, (that is to say,) as to, for, and concerning the aforesaid plantation called Sweet River plantation, and all and every the buildings, lands, tenements, and appurtenances, negro and other slaves, cattle, utensils, and stock whatsover, which now are, or shall, at the time of my decease, be therewith used or thereto belonging; and also, as to, for, and concerning, all my lands, tenements, and hereditaments whatsoever, situate, lying and being in New England aforesaid, to the use of my son, Richard Vassall, and his assigns, for and during his life, and from and after the determination of that estate by forfeiture or otherwise during his life, to the use of the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, and their heirs, during the life of the said Richard Vassall, in trust to preserve the contingent uses and estates hereinafter mentioned from being defeated or destroyed, and for that purpose to make entries and bring actions, as occasion shall be or require; but nevertheless, to permit and suffer the said Richard Vassall and his assigns to have, receive, and take the rents, issues and profits, and produce of the said last mentioned plantation lands, tenements, negro and other slaves, cattle, utensils, and stock, hereditaments and premises, with their appurtenances, to and for his and their own use and uses during his life. And as to, for, and concerning the said plantations called Friendship and Greenwich plantations, and all and every the buildings, lands, tenements and appurtenances, negro and other slaves, cattle, utensils, and stock whatsoever, therewith respectively used, or thereto respectively belonging, from and immediately after my decease, to the use, intent, and purpose that my daughter, Elizabeth Barrington, (with whom I did advance a considerable portion upon her marriage with the honorable major general John Barrington, her late husband,) Hester Deere, the wife of Deere, of Cardiff, in the county of Glamorgan, and who is sister to my late

wife, Elizabeth Vassal, shall and may, out of all the said two plantations, hereditaments, and premises last mentioned, severally have, receive, and take, yearly and every year during their respective lives, such annual sums or yearly rents as hereinafter mentioned—that is to say, the said Elizabeth Barrington an annual sum or yearly rent of fifty pounds of lawful money of Great Britain, for and during her life; and the said Hester Deere an annual sum or yearly rent of thirty pounds of lawful money as aforesaid, for and during her life, which I mean and intend for her separate use, independent of her husband, and to be paid into her own hands, upon her own receipt; each of the said annual sums or yearly rents of fifty pounds and thirty pounds, to be yearly issuing and payable out of the same two plantations, hereditaments, and premises last mentioned, and be payable and paid on the Royal Exchange in London, yearly and every year, by four equal quarterly payments, on or at the feasts or days hereinafter mentioned—that is to say, the feast of the annunciation of the blessed Virgin Mary, the nativity of Saint John the Baptist, Saint Michael the Archangel, and the birth of our Lord Christ, in every year, without any deduction or abatement whatsoever out of the same or any part thereof; the first quarterly payment of the said annual sum or yearly rents of fifty pounds and thirty pounds respectively to be made on such of said feasts or days as shall first happen after my decease. And as to, for, and concerning all the said two plantations called Friendship and Greenwich, and the buildings, lands, tenements, and appurtenances, negro and other slaves, cattle, utensils, and stock whatsoever therewith respectively used or thereto respectively belonging, subject to the said several annual sums or yearly rents of fifty pounds and thirty pounds, or such of them as shall become payable, to the use of William Dickenson, of Queen Ann street, in the parish of Saint Marylebone aforesaid, and William Smith, of Wimpole street aforesaid, esqrs., their executors, administrators, and assigns, for and during the term of five hundred years, without impeachment of waste, to commence and be computed from my death, and from thenceforth next ensuing fully to be completed and ended, without impeachment of waste; nevertheless, upon the trusts, for the intents and purposes, and subject to the provisoes hereinafter expressed and declared, of and concerning the said term, and from and immediately after the end, expiration, or other sooner determination of the said term of five hundred years, and in the mean time subject thereto, and to the trusts thereof, and to the said several annual sums or yearly rents of fifty pounds and thirty pounds, or such of them as shall become payable to the use of my said son, Richard Vassall, and his assigns, for and during his life, and from and after the determination of that estate by forfeiture or otherwise, in the lifetime of the said Richard Vassall, to the use of the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, and their heirs, during the life of the said Richard Vassall, in trust to preserve the contingent uses and estates hereinafter mentioned from being defeated or destroyed, and for that purpose to make entries and bring actions, as

occasion shall be or require; but nevertheless to permit and suffer the said Richard Vassall and his assigns to have, receive, and take the rents, issues, and profits of the said plantations, hereditaments, and premises to and for his and their own use and uses during his life. And as to, for, and concerning the said two last mentioned plantations, lands, tenements, negro and other slaves, cattle, utensils, stock, hereditaments, and premises, with the appurtenances, from and immediately after the decease of my said son, Richard Vassal, but subject to the said term of five hundred years and the trusts thereof, and the said annual sums or yearly rents of fifty pounds and thirty pounds, or such of them as shall become payable. And also as to, for, and concerning the said plantation called Sweet River plantation, with the lands, tenements, negro and other slaves, cattle, utensils, stock, hereditaments, and premises, with the appurtenances, and the said lands, tenements, and hereditaments in New England aforesaid, from and immediately after the decease of the said Richard Vassall, to the uses of all and every the son and sons of the body of the said Richard Vassall, begotten or to be begotten, to be equally divided between or amongst said sons, if more than one, share and share alike, and they to take as tenants in common, and not as joint tenants; and the several and respective heirs male of the body and bodies of all and every such son and sons issuing, and in case of the decease of any such son and sons, (there being more than one,) and failure of such issue male of his or their body or bodies respectively, then as to the part or share, or parts and shares, of and in the said premises, as well originally belonging to, as accruing or devolving upon, such son or sons by survivorship, the same shall from time to time, so often as it shall so happen, go, remain, and enure unto and to the use of the survivors and survivor, and others and other, of the said sons, and to the heirs male of the bodies and body of such surviving and other son and sons respectively; such surviving and other sons, if more than one, to take also in equal shares, as tenants in common, and not as joint tenants; and if the issue male of all such sons save one shall fail, or if there shall be but one such son, then to such one or remaining son, and the heirs male of his body issuing; and for default of such issue, to the use of the said William Dickenson and William Smith, their executors, administrators, and assigns, for, and during, and unto the full end and term of six hundred years, to commence and be computed from the failure of such issue male of the said Richard Vassall, and from thenceforth fully to be complete and ended, without impeachment of waste, upon the trusts, for the intents and purposes, and under and subject to the provisoes hereinafter declared and expressed, of or concerning the same term; and from and immediately after the end, expiration, or other sooner determination of the said term, and in the mean time subject thereto, and to the trusts thereof, to the use of Elizabeth Vassall, the now only daughter of the said Richard Vassall, and her assigns, for and during her life; and from and immediately after the determination of that estate by forfeiture, or otherwise, during the life of the said Elizabeth Vassall, to the use of the said Hugh, Lord Viscount Falmouth,

William Wildman, Lord Viscount Barrington, and Charles Spooner, and their heirs, during the life of the said Elizabeth Vassall, in trust, by the ways and means before mentioned, to preserve the contingent uses and estates hereinafter mentioned from being defeated or destroyed; but, nevertheless, to permit and suffer the said Elizabeth Vassall, and her assigns, to receive and take the rents, issues, and profits of the said plantations, lands, tenements, negro, and other slaves, cattle, utensils, stock, hereditaments, and premises, with their appurtenances, to and for her and their own use or uses during her life; and from and immediately after the decease of the said Elizabeth Vassell, to the use of all and every the son and sons of the said Elizabeth Vassell to be begotten, to be divided between or amongst such sons, if more than one, share and share alike, and they to take as tenants in common and not as joint tenants, and the several and respective heirs male, of the body and bodies of all and every such son and sons issuing. And in case of the decease of any such son and sons, there being more than one, and failure of such issue male of his or their body, or bodies, respectively, then as to the part or share, or parts and shares, of and in the said premises, as well originally belonging to, as accruing or devolving upon, such son or sons, by survivorship, the same shall, from time to time, as often as it shall so happen, go, remain, and enure unto and to the use of the survivors and survivor, and others and other, of the said sons and the heirs male of the bodies and body of such surviving and other son and sons respectively; such surviving and other son, if more than one, to take also in equal shares, as tenants in common and not as joint tenants. And if the issue male of all such sons save one shall fail, or if there shall be but one such son, then to such one, or remaining son, and the heirs male of his body issuing; and for default of such issue, to the use of the second and all and every other daughter and daughters of the body of the said Richard Vassall, begotten or to be begotten, to be equally divided between or amongst such other daughters, if more than one, share and share alike, and they to take as tenants in common and not as joint tenants, and of the several and respective heirs of the body and bodies of all and every such other daughter and daughters issuing. And in case of the decease of any such other daughter or daughters, there being more than one, and failure of issue of her or their body or bodies respectively, then as to the part and share, or parts and shares, of and in the said premises, as well originally belonging to, as accruing or devolving upon, such other daughter or daughters, by survivorship, the same shall, from time to time, so often as it shall so happen, go, remain, and enure unto and to the use of the survivors and survivor, and others and other, of the said other daughters, and the heirs of the body or bodies of such surviving and other daughter and daughters respectively; such surviving and other daughters, if more than one, to take also in equal shares, as tenants in common and not as joint tenants; and if the issue of all such other daughters of the said Richard Vassall, save one, shall fail, or if there shall be but one such other daughter, then to such one or remaining other daughter, and to the heirs of her

body issuing; and for default of such issue, to the use of all and every the daughter and daughters of the said Elizabeth Vassall, to be begotten, to be equally divided between or amongst such daughters, if more than one, share and share alike, and they to take as tenants in common and not as joint tenants; and of the several and respective heirs of the body and bodies of all and every such daughter and daughters issuing. And in case of the decease of any such daughter or daughters, there being more than one, and failure of issue of her or their body or bodies respectively, then as to the part and share, or parts and shares, of and in the said premises, as well originally belonging to, as accruing or devolving upon, such daughter or daughters by survivorship, the same shall, from time to time, so often as it shall so happen, go, remain, and enure unto and to the use of the survivors and survivor, and others and other, of the said daughters, and the heirs of the bodies and body of such surviving and other daughters respectively, such surviving and other daughters, (if more than one,) to take also in equal shares, as tenants in common and not as joint tenants; and if the issue of all such daughters of the said Elizabeth Vassall, save one, shall fail, or if there shall be but one such daughter, then to such one, or remaining daughter, and the heirs of her body issuing; and for default of such issue, to the use, intent, and purpose that my said daughter, Elizabeth Barrington, and her assigns may, from thenceforth have, receive, and take, for and during the then remainder of her life, one clear annual sum, or yearly rent, of two hundred pounds of like lawful money, in lieu of the said annual sum or yearly rent of fifty pounds hereinbefore given to her; the said annual sum, or yearly rent, of two hundred pounds to be from thenceforth yearly issuing, and payable out of all and every the said plantations, lands, hereditaments, and premises hereinbefore devised, and be payable and paid at the place, upon the days, and in the same manner and proportions as is hereinbefore directed concerning the other annual sum or yearly rent of fifty pounds. The first payment of the said annual sum or yearly rent of two hundred pounds, to be paid on such of the feasts or days hereinbefore mentioned as shall first happen after the decease of my said son, Richard Vassall, and failure of issue by him as aforesaid, and subject and chargeable with the said annual sum, or yearly rent, of two hundred pounds to the use of my grandson, George Barrington, third son of my said daughter, Elizabeth Barrington, and his assigns, for and during his life; remainder to the same trustees and their heirs during his life, to preserve the contingent remainders [or] remainder, after his decease, to the use of all and every his son and sons in tail male, but if more than one, then they to take, as tenants in common in tail male; with cross remainders between them in tail male, in the same manner as is hereinbefore directed or limited with respect to the sons of my said son, Richard Vassall, with remainder to all and every the daughter and daughters of the said George Barrington, in tail; but, if more than one, then they to take as tenants in common, in tail with cross remainders between them in tail. And for default of such issue to the use of my grandson, Richard Barrington, second son

of my said daughter, Elizbeth Barrington, and his assigns, for and during his life, remainder to the same trustees and their heirs during his life, to preserve the contingent remainders, with remainder after his decease, to the use of all and every his son and sons, in tail male; but if more than one, then they to take as tenants in common in tail male, with cross remainder between them in tail male, in manner before mentioned, with remainder to all and every his daughter and daughters in tail; but if more than one, then they to take as tenants in common in tail, with cross remainders between them in tail; and for default of such issue, to the use of my grandson, William Barrington, eldest son of my said daughter, Elizabeth Barrington, and his assigns, for and during his life, remainder to the same trustees and their heirs during his life, to preserve the contingent remainders, with remainder after his decease, to the use of all and every his son and sons in tail male; but if more than one, to take as tenants in common in tail male, with cross remainders between them in tail male, in manner before mentioned, with remainder to all and every his daughter and daughters in tail; but if more than one, then they to take as tenants in common in tail, with cross remainders between them in tail; and for default of such issue to the use of my granddaughter, Louisa Barrington, and her assigns, for and during her life, remainder to the same trustees and their heirs during her life, to preserve the contingent remainders, with remainder after her decease, to the use of all and every her son and sons in tail male; but if more than one, then they to take as tenants in common in tail male, with cross remainders between them in tail male, in manner beforementioned, with remainder to all and every her daughter and daughters in tail; but if more than one, then to take as tenants in common in tail, with cross remainders between them in tail; and for default of such issue, to the use of my said daughter, Elizabeth Barrington, and her assigns, for and during her life, remainder to the same trustees and their heirs during her life, to preserve the contingent remainders, with remainder after her decease, to the use of her fourth and other future sons in tail male, successively, with remainder to her future daughters as tenants in common in tail, with cross remainders between them in tail; and for default of such issue, to the use of my nephew, Rose Hering May, and his assigns, for and during his life, remainder to the same trustees and their heirs during his life, to preserve the contingent remainders, with remainder after his decease, to the use of all and every his son and sons in tail male; but if more than one, then they to take as tenants in common in tail male, with cross remainders between them in tail male, in manner before mentioned, with remainder to all and every his daughter and daughters in tail; but if more than one, then they to take as tenants in common in tail, with cross remainders between them in tail; and for default of such issue, to the use of the minister and church wardens, for the time being, of the said parish of Westmoreland, in the said Island of Jamaica, and their successors forever, in trust for the use of a charity school to be built on my said estate there, called Friendship and Greenwich, to be endowed, kept up, and sup-

ported by and out of the produce thereof, in such manner, and under and subject to such regulations and orders as shall from time to time be directed and made by the assembly of the said Island for the time being. Provided always, and my will and mind nevertheless, is, that it shall and may be lawful, to and for, and I do hereby accordingly request and desire the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, and the survivors and survivor of them, and the heirs of such survivor, from time to time, as there shall be occasion, by and out of the rents, issues, profits, and yearly produce of the said plantations, called Friendship and Greenwich, to buy in such negroes, cattle, utensils, and other stock, and things, as shall be proper and necessary for the improvement of the estates and premises, and for keeping up the number and quantity of slaves, cattle, and other stock thereon, so that there shall always be the number of five hundred slaves, and quantity of cattle and other stock in proportion, upon my said estates called Friendship and Greenwich. Provided, also, and my will and mind nevertheless likewise is, that it shall and may be lawful to and for the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, and the survivors and survivor of them, and the heirs of such survivor, from time to time to employ, and authorize, and empower any person or persons, as he or they in their discretion shall think most fit, to be attorney or attorneys, manager or managers, of the said plantations, estates, and effects, in the said Island of Jamaica, other than Sweet River plantation, during the life of the said Richard Vassall, and to be aiding and assisting to them, the said trustees or trustee, in, about, or relating to the trust hereby in them reposed; but do recommend, that my said son, Richard Vassall, may be always one of said attorneys or managers, and whilst he continues in Jamaica, the only such attorney or manager, unless my said trustees for the time being shall, in their discretion, think otherwise; and such attorneys or managers, or any of them, from time to time to remove, and to place or put others in their room or stead, as to my said trustees for the time being shall be thought most fit and expedient, and pay and allow, out of the rents, issues, profits, and produce of the said hereditaments and premises to such person and persons respectively, as shall be so employed, authorized, and empowered for any of the purposes aforesaid, such sum and sums of money by way of salary, in lieu of wages, and all other allowances, (and not by way of commissions) for his and their trouble and expenses, as they, the said trustees or trustee for the time being, shall think fit. And as to the said term of five hundred years, hereinbefore given or limited to the said William Dickenson and William Smith, their executors, administrators, and assigns, I declare, that the same is so given or limited to them, upon the trusts, and for the intents and purposes, and with and subject to the powers, provisoes, and declarations hereinafter mentioned, that is to say, upon trust that they, the said William Dickenson and William Smith, and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, after my de-

cease, receive and take out of the rents, issues, profits, and produce of the same plantations, lands, tenements, hereditaments, and premises, comprised in the said term of five hundred years, the clear yearly sum of two hundred pounds, of lawful money of Great Britain, during the joint lives of my daughter, Anna Maria Russell, and William Henry Russell, her husband, and pay the same into the proper hands of my said daughter, Anna Maria Russell, wherever she shall then be, and not to any other person whatsoever, on the four several feasts or days hereinbefore mentioned, by even and equal quarterly portions, free and clear of and from all parliamentary and other taxes, payments, and deductions whatsoever; the first quarterly payment of the said yearly sum of two hundred pounds to be made on such of the said feasts or days as shall first and next happen after my decease, and the said yearly sum of two hundred pounds to be for my said daughter Anna Maria Russell's peculiar expense, and for her sole and separate use and disposal, free from the power or control of the said William Henry Russell, her husband, and wherewith he shall in nowise intermeddle; and the receipt and receipts of the said Anna Maria Russell, signed with her own hand, and of no other person or persons whomsoever, shall, notwithstanding her coverture, be sufficient discharge and discharges for the said yearly sum of two hundred pounds, or so much thereof as in and by such receipt and receipts shall be acknowledged or expressed to be received; provided always, and as the said provision or yearly sum of two hundred pounds is intended for the maintenance and support of my said daughter, and to supply her own immediate occasions, I do hereby expressly will and declare, that, if the said Anna Maria Russell shall under any pretence whatsoever alienate, sell, or dispose of the said yearly sum of two hundred pounds, or any part thereof, that then and in such case the payment of the said yearly sum of two hundred pounds shall from thenceforth cease and determine in such and in the like manner as if the said Anna Maria Russell was naturally dead, any thing in this my will before contained to the contrary thereof in any wise notwithstanding. And upon further trust, that they, the said William Dickenson and William Smith, and the survivor of them, and the executors, administrators, and assigns of such such survivor, do and shall, after my decease, by and out of the rents, issues, produce, and profits of the said plantations, lands, tenements, hereditaments, and premises comprised in the said term of five hundred years, or by mortgage, sale, or other disposition of the same plantations, lands, tenements, hereditaments, and premises, comprised in the said term of five hundred years, or by mortgage, sale, or other disposition of the same plantations, lands, tenements, hereditaments and premises, or any part or parts thereof, for all or any part of the said term of five hundred years, or by all or any of the said ways and means, or by any other ways and means which he or they shall in his or their discretion think fit; but subject nevertheless, and without prejudice, to the said annual sum of two hundred pounds, and to the several annuities or yearly sums of fifty pounds and thirty pounds

by this my will devised and given as aforesaid, levy and raise the sum of five hundred pounds of lawful money of Great Britain for the portion and portions of each and every child of my said daughter Anna Maria Russell by the said William Henry Russell, her husband, begotten or to be begotten, as and when every such child shall be respectively born, or in case any such child or children shall be born in my lifetime, then immediately after my decease. And I will and direct, that all and every the sum and sums of money so to be levied and raised for the portion and portions of the children of my said daughter by the said William Henry Russell as aforesaid shall, as and when the same shall be so levied or raised by the said trustees, placed out or invested in the purchase of real securities, or parliamentary funds, or public stocks at interest in their joint names, who from time to time may call in such moneys so lent out on securities, or sell the said parliamentary funds or public stocks, and place and lend out the money, so to be called in or to arise from such sale, again upon the like securities at interest. And my will is, that the said trustees, and the survivor of them, and the executors or administrators of such survivor, shall stand and be possessed of, and interested in, the said several sums of five hundred pounds, so to be levied and raised as aforesaid, and the securities to be purchased therewith respectively, in trust and for the benefit of the said children of my said daughter Anna Maria Russell by the said William Henry Russell, to be paid or transferred to him, her, or them, at such time or times as are hereinafter mentioned, that is to say, to such child or children as shall be a son or sons, at his or their ages of twenty-one years, or sooner for his or their preferment or advancement, as they, the said trustees, or the survivor of them, or the executor or administrator of such survivor, shall think fit; and to such child or children as shall be a daughter or daughters, at her or their age or ages of twenty-one years, or day or days of marriage, which shall respectively first happen; and upon trust in the mean time to apply and dispose of the interest, dividends and annual produce of the said stocks, funds, and securities in, for, or towards the maintenance and education of such child or children in proportion to his, her, or their apparent share or shares and interest of and in the capital of the said stocks, funds, and securities; provided always, and my will further is, that if any one or more of such children, being a son or sons, shall depart this life before he or they shall attain his or their age or ages of twenty-one years respectively, and being a daughter or daughters, shall die before she or they shall attain her or their age or ages of twenty-one years respectively, without having been married, then the said portion and portions of such child or children, or so much thereof as shall not have been sooner advanced as aforesaid, shall go and accrue to the survivors and survivor of such children, and be equally divided between or amongst them, if more than one, share and share alike; and the same shall go in such and the same manner and be paid and transferable at such time or times to such surviving or other child or children, or his, her, or their original portion or portions; and in case any other of the said children, being a son or sons, shall depart this life before he or they shall attain his

or their age or ages of twenty-one years respectively, and being a daughter or daughters, shall die before she or they shall attain her or their age or ages of twenty-one years respectively, without having been married, then his, her, and their share and shares of and in such portion or portions shall again from time to time survive, accrue, and go together with her or their original portion or portions to the then survivors or survivor, or others or other of such children, and shall be paid and transferred at such time or times as his, her, or their original share or shares of the said portions shall, by virtue of this my will, become payable, or transferred as aforesaid; provided also, and my will further is, that if there shall be any such child or children of my said daughter, Anna Maria Russell, by the said William Henry Russell, her husband, and they shall all die before his, her, or their portion or portions shall, according to the true intent and meaning of this my will, vest and be and become payable or transferable, then and in such case I will and direct, that the said trustees for the time being shall from thenceforth stand and be possessed of the stocks, funds, and securities in which such portion and portions shall have been placed out or invested in trust for my said son, Richard Vassall, his executors, administrators, and assigns, and do and shall assign and transfer the same to him or them accordingly. And upon this further trust, in case my said daughter Anna Maria Russell shall survive the said William Henry Russell, her present husband, then that they, the said William Dickenson and William Smith, and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, after the decease of the said William Henry Russell, receive and take out of the rents, issues, profits, and produce of the said plantations, lands, tenements, hereditaments, and premises, the clear yearly sum of three hundred pounds of like lawful money of Great Britain, (in lieu of the aforesaid yearly sum of two hundred pounds,) during the then remainder of the life of the said Anna Maria Russell, and pay the same into the proper hands of the said Anna Maria Russell on the four usual feasts or days in the year hereinbefore mentioned, by even and equal quarterly portions, free and clear of and from all parliamentary and other deductions whatsoever. The first quarterly payment of the said yearly sum of three hundred pounds to be made on such of the said feasts or days hereinbefore mentioned as shall first and next happen after the decease of the said William Henry Russell. The said yearly sum of three hundred pounds to be likewise for my said daughter's peculiar expenses, and for her sole and separate disposal, free from the power or control of any after taken husband, and wherewith he shall in no wise intermeddle; and the receipt and receipts of my said daughter, signed with her own hand, and of no other person or persons whomsoever, shall, notwithstanding her future coverture, be sufficient discharge or discharges for the said yearly sum of three hundred pounds, or s. much thereof as in and by such receipt and receipts shall be acknowledged or expressed, to be received; and whereas, the said yearly rent of three hundred pounds is intended as a permanent provision for my said daughter during the remainder of her life, in case she shall survive her present husband, I do hereby likewise

expressly will and declare, that if my said daughter shall, under any pretence whatsoever, alienate, sell, or dispose of the said yearly sum of three hundred pounds, or any part thereof, that then and in such case the payment of the said yearly sum of three hundred pounds shall, from thenceforth, cease, end, and determine in such and the like manner as if the said Anna Maria Russell was then naturally dead; and upon further trust, that in case my said daughter Anna Maria Russell shall survive the said William Henry Russell, her present husband, and shall afterwards marry again with the previous consent, in writing, of the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, or the survivors or survivor of them, or the executor or administrator of such survivor, or the major part of them, for the time being, that then and in such case, but not otherwise, the said William Dickenson and William Smith, or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall, after the decease of the said Anna Maria Russell, by and out of the rents, issues, profits, and produce of the said plantations, lands, tenements, hereditaments, and premises comprised in the said term of five hundred years, or by mortgage, sale, or other disposition of the same plantations, lands, tenements, hereditaments, and premises, or any part or parts thereof, for all or any part of the said term of five hundred years, or by all or any of the said ways and means, or by any other ways or means which he or they shall, in his or their discretion, think fit, but subject, nevertheless, and without prejudice, to the said several annual sums or yearly rents hereinbefore given, levy, and raise the sum of ten thousand pounds of lawful money of Great Britain, for the portion or portions of all, every, the child and children of the said Anna Maria Russell, by any after taken husband, to be paid to such last mentioned child or children at such time or times, and if more than one, in such share or proportions, as hereinafter mentioned, (that is to say,) if there shall be only one such child, then the said sum of ten thousand pounds to be paid and payable to such one child, being a son, at his age of twenty-one years, or the same or any part thereof to be sooner paid or applied for his preferment or advancement, as they the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, shall think fit, the said Anna Maria Russell being then dead; and being a daughter at her age of twenty-one years or day of marriage, which shall first happen, to be after the decease of the said Anna Maria Russell, but if such one child, being a son, shall attain his said age of twenty-one years, or, being a daughter, shall attain her said age of twenty-one years, or be married in the lifetime of the said Anna Maria Russell, then to be paid within twelve calendar months after her decease, together with interest for the same, after the rate of four pounds for one hundred pounds for a year from the death of the said Anna Maria Russell; and if there shall be two or more such children, then the said sum of ten thousand pounds to be paid and payable to such two or more

children, and to go unto, and to be shared and divided between or amongst all such children equally, share and share alike, and to be paid and payable in manner following, that is to say, the share and shares of such of them as shall be a son or sons, to be paid to him or them, at his or their age or ages of twenty-one years, or sooner, for his or their preferment or advancement, as they, the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, shall think fit, the said Anna Maria Russell being then dead; and the share or shares of such of them as shall be a daughter or daughters, to be paid to her or them, at her or their age or ages of twenty-one years, or day or days of marriage, which shall respectively first happen after the decease of the said Anna Maria Russell; but if any such child or children, being a son or sons, shall have attained his or their age or ages of twenty-one years, or being a daughter or daughters, shall have attained her or their age or ages of twenty-one years, or be married in the lifetime of the said Anna Maria Russell, then the share or shares of such child or children, being a son or sons so attaining such age, and being a daughter or daughters so attaining such age, or marrying as aforesaid, shall be raised and paid within twelve calendar months next after the decease of the said Anna Maria Russell, with interest for the same, after the rate of four pounds for one hundred pounds for a year from the day of her death; provided, that, notwithstanding the postponing the payment of such portion and portions as aforesaid, until after the death of the said Anna Maria Russell, all and every such portion and portions shall, nevertheless, be and be deemed and considered as vested interests in such of the said children, being a son or sons, as shall attain to his or their age or ages of twenty-one years respectively, and being a daughter or daughters, shall attain that age, or be married in the lifetime of the said Anna Maria Russell; provided, also, that if any one or more of such children, being a son or sons, shall depart this life before he or they shall attain his or their age or ages of twenty-one years respectively, and being a daughter or daughters, shall die before she or they shall attain her or their age or ages of twenty-one years respectively, without having been married, then the said portion or portions hereinbefore provided for such child or children so dying as aforesaid, or so much thereof as shall not have been sooner advanced as aforesaid, shall go and accrue to the survivors and survivor, and others and other of such children, and be equally divided between or amongst them, if more than one, share and share alike; and the same shall go in such and the same manner, and be paid and payable at such time or times to such surviving or other child or children, as his, her, or their original portion or portions; and in case any other of the said children, being a son or sons, shall depart this life before he or they shall attain his or their age or ages of twenty-one years respectively, being a daughter or daughters, shall die before she or they shall attain her or their age or ages of twenty-one years respectively, without having been married, then his, her, and their share and

shares of and in such portion and portions so directed, to survive as aforesaid, shall again from time to time survive, accrue, and go, together, with his, her, or their original portion or portions, to the survivors and survivor, or others and other of such children, and shall be paid and payable at such time or times as his, her, or their original share or shares of the said sum of ten thousand pounds shall, by virtue of this my will, become payable; and upon this further trust, that they, the said William Dickenson and William Smith, and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, whether the said Anna Maria Russell be living or dead, but subject and without prejudice as aforesaid, by and out of the rents, issues, profits, and produce of the said plantations, lands, tenements, hereditaments, and premises comprised in the said term of five hundred years, or any part or parts thereof, or by any other the ways and means aforesaid, levy and raise such annual sum and sums of money for the maintenance and education of such child or children, until his, her, or their portion or portions shall become payable respectively, as they, the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, or the survivor or survivors of them, or the executors, administrators, or assigns of such survivor, shall in his or their discretion think fit, not exceeding the sum of one hundred pounds a year for any one child, nor in any case the interest of the portion and portions of such child or children, after the rate of four pounds for one hundred pounds for a year; the said annual sum or sums for maintenance to be free and clear of and from all taxes, charges, assessments, impositions, deductions, or abatements whatsoever; and to be paid quarterly, at or upon the feasts or days hereinbefore mentioned, in every year. And upon this further trust, that they, the said William Dickenson and William Smith, and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, after my decease, receive and take out of the rents, issues, profits, and produce of the said plantations, hereditaments and premises, comprised in the said term of five hundred years, the further clear yearly sum of one hundred pounds, of like lawful money of Great Britain, during the life of a certain youth called Phœnix Felton, now on the foundation of Westminster School, and pay the same unto the said Phœnix Felton on the four several feasts or days hereinbefore mentioned, by even and equal quarterly portions, free and clear of and from all parliamentary and other taxes, payments, and deductions whatsoever; the first quarterly payment of the said last mentioned yearly sum of one hundred pounds to be made to the said Phœnix Felton on such of the said feasts or days as shall first and next happen after my decease. Provided, always, and as the said provision or yearly sum of one hundred pounds is intended for the maintenance and support of the said Phœnix Felton, I do hereby expressly will and declare, that if the said Phœnix Felton shall, under any pretence whatsoever, alienate, sell, or dispose of the said yearly sum of one hundred pounds, or any part thereof, other than to my said son Richard Vassall, that then and in such case the payment

of the said yearly sum of one hundred pounds shall from thenceforth cease, end, and determine in such and the like manner as if the said Phœnix Felton was naturally dead; and although I have not, nor do mean absolutely to restrain the said Phœnix Felton from selling the said yearly sum of one hundred pounds, or any part thereof, unto my son Richard Vassall, yet, I do rely, and most earnestly request of my said son, Richard Vassall, not to purchase the said yearly sum of one hundred pounds, or any part thereof, from the said Phœnix Felton, at less than the sum of two thousand pounds for the whole, or in that proportion for any part thereof. And my said son Richard Vassall will not purchase the said yearly sum of one hundred pounds, or any part thereof, from the said Phœnix Felton, unless the said Richard Vassall shall be satisfied and convinced that such purchase will be for the immediate benefit and advantage of the said Phœnix Felton; provided, also, that in case the said Phœnix Felton shall not have attained his age of twenty-one years at the time of my decease, then I will that he shall be paid or allowed eighty pounds a year, and no more, during his minority. And upon further trust, that they, the said William Dickenson and William Smith, and the survivor of them, and the executors or administrators of such survivor, do and shall permit and suffer the residue and surplus of the rents, issues, profits, and annual produce of the plantations, hereditaments, and premises, comprised in the said term of five hundred years, which shall remain after, and shall not be applied in, for, or towards the execution and performance of the trusts of the same term to be had, received, and taken by the person and persons to whom the reversion or remainder of the same premises immediately expectant on the determination of the same term, shall, by virtue of the uses and estates hereinbefore limited for the time being, belong or appertain; provided, always, that when all the trusts, hereinbefore declared of and concerning the same term, shall have been executed and performed, or shall become unnecessary, and the costs and charges of the trusts of the same term shall have been paid and satisfied, that then, and from thenceforth, the said term of five hundred years shall cease, determine, and be absolutely void. And as to the said term of six hundred years hereinbefore given, or limited, to the said William Dickenson and William Smith, their executors, administrators, and assigns, as aforesaid, I declare that the same is so given or limited to them, upon the trusts, and for the intents and purposes, and with and subject to the powers, provisoes, and declarations, hereinafter mentioned; (that is to say,) in case at the time of the death of the said Richard Vassall there shall be no issue male of his body begotten living, or afterwards born alive, or there being such issue male, all of them shall die without issue male before any of them shall attain the age of twenty-one years, and there shall happen to be one or more younger daughter or daughters of the said Richard Vassall at the time of failure of such issue male, or at any time afterwards, then the said William Dickenson and William Smith, and the survivor of them, and the executors or administrators of such survivor, do and shall, after the decease of the said Richard Vassall, by and out of the rents, is-

sues, profits, and produce of the said plantation lands, slaves, hereditaments, and premises hereinbefore devised, or intended so to be, or by mortgage, sale, or other disposition of the same, or any part or parts thereof, for all or any part of the said term of six hundred years, or by all or any of the ways or means before mentioned, which he or they shall, in his or their discretion, think fit; but subject, nevertheless, and without prejudice, to the aforesaid several rents or annual sums hereinbefore mentioned, and the said term of five hundred years, and the trusts thereof, levy and raise such sum and sums of money, for the portion and portions of the said younger daughter and daughters of the said Richard Vassall, as is hereinafter mentioned: (that is to say,) if one younger daughter only, the sum of ten thousand pounds sterling; if two younger daughters, the sum of twelve thousand pounds sterling, equally between them; and if three or more younger daughters, the sum of fifteen thousand pounds, equally amongst them; the said portions to be paid to such younger daughter and daughters at their respective ages of twenty-one years, or days of marriage, which shall first happen after the decease of the said Richard Vassall; but if any of the said younger daughters shall attain the age of twenty-one years, or be married in the lifetime of the said Richard Vassall, then the portion and portions of such younger daughter and daughters shall be paid to her or them respectively within three months after the decease of the said Richard Vassall; and upon further trust, that after the death of the said Richard Vassall, and in the mean time, and until such portion or portions shall become respectively payable, as aforesaid, the said William Dickenson and William Smith, and the survivor of them, and the executors or administrators of such survivor, do and shall, by and out of the rents, profits, and produce of the hereditaments and premises comprised in the said term of six hundred years, raise and levy such yearly sum and sums of money for the maintenance of such younger daughter or daughters as they, or the survivor of them, or the executors or administrators of such survivor, shall in their or his discretion think fit. Yet so, nevertheless, that none of the said younger daughters shall have more than one hundred pounds a year for their respective maintenance, until they shall respectively attain their ages of fifteen years, nor afterwards more than will be equivalent to the interest of her or their respective portion or portions, after the rate of three pounds by the hundred pounds for a year, until their respective portions shall become vested, and then after the rate of four pounds per centum per annum, until raised and paid; provided always, that if any of the said younger daughters shall happen to die before her or their portion or portions shall become payable by virtue of this my will, then the portion or portions of her or them so dying shall go, accrue, and be paid to, and equally divided between, the surviving younger daughter or daughters, when her or their original portion and portions shall become payable. Yet so, nevertheless, as in that case there be but three such surviving younger daughters they shall have no more than the sum of fifteen thousand pounds amongst them; and if only two such surviving younger daughters, no more than the sum of twelve thousand pounds

between them; and if only one such surviving younger daughter, then no more than the sum of ten thousand pounds, by virtue of this my will; provided, also, that no sale or mortgage for raising such portion or portions, as aforesaid, shall be made until some one of the said portions shall become payable by virtue of this my will; provided, also, that in case there shall be no such younger daughter or daughters, or there being such, all of them shall happen to die before any of their portions shall become payable, then upon further trust, that the said William Dickenson and William Smith, and the survivor of them, and the executors and administrators of such survivor, do and shall, by the ways and means aforementioned, levy and raise out of the said premises, comprised in the said term of six hundred years, the sum of two thousand pounds, of lawful money of Great Britain, for the benefit of such of the younger children of my said daughter, Elizabeth Barrington, as shall be living at the time of *my* decease of the said Richard Vassall, to be equally divided between them, if more than one, share and share alike; and if there shall be but one such younger child then living, then the whole to such surviving younger child. And upon further trust that they, the said William Dickenson and William Smith, and the survivor of them, and the executors or administrators of such survivor, do and shall permit or suffer the residue and surplus of the rents, issues, and profits of the plantations, hereditaments, and premises, comprised in the said term of six hundred years, which shall remain after, and shall not be applied in, for, or towards the execution and performance of the trusts of the same term to be had, received, and taken by the person and persons to whom the reversion or remainder of the same premises immediately expectant on the determination of the same term shall, by virtue of the uses and estates hereinbefore limited for the time being, belong or appertain; provided, always, that when all the trusts hereinbefore declared of and concerning the same term shall have been executed and performed, or shall become unnecessary, and the costs and charges of the trustees of the said term shall have been paid and satisfied, that then, and from thenceforth, the said term of six hundred years shall cease, determine, and be absolutely void; provided, also, and I do hereby, nevertheless, will and declare, that it shall and may be lawful, to and for my said son, Richard Vassall, by any deed or deeds, writing or writings, to be by him sealed and delivered in the presence of two or more credible witnesses, to grant, limit, or appoint, unto or to the use of his present wife, and also unto or to the use of such woman or women whom the said Richard Vassall may, after the decease of his said present wife, marry or take to wife, for her or their life or lives, in nature of a jointure or jointures for her or them, and in bar of her or their dower, any yearly rent or annual sum, tax free, and without any deduction to be issuing out of, and chargeable upon all or any part of the said premises, plantations, lands, tenements, negro and other slaves, hereditaments, and premises, hereby devised and to be paid quarterly on the four most usual feasts or days of payment in the year, and with such powers and remedies for the recovering such rent or an-

nual sum when in arrear, and such term of years for better securing the due payment thereof, to take effect immediately after the decease of the said Richard Vassall, as to him, the said Richard Vassall, shall seem meet, so as such yearly rent or annual sum so to be granted, limited, or appointed, be likewise subject, and without prejudice, to the said several annual sums of fifty pounds and thirty pounds, or to any of the trusts herein declared of and concerning the said term of five hundred years; and yet, so, nevertheless, as that the rent or annual sum so to be granted, limited, or appointed, to or to the use of such present or any future wife or wives, by virtue of this power, do not, nor shall not, exceed in the whole the yearly rent or annual sum of four hundred pounds, tax free. And my further will is, and I do hereby also declare, that it shall and may be lawful, to and for my said son, Richard Vassall, at any time or times during his life, in case he shall have any son or sons, by indenture under his hand and seal, or by his last will and testament in writing, to be by him signed and published in the presence of two or more credible witnesses, to charge all or any part of the said plantations and premises hereinbefore devised, with the payment of any sum or sums of money not exceeding fifteen thousand pounds in the whole, for the portion or portions of the daughter or daughters of him, the said Richard Vassall, begotten, or to be begotten, to be paid in such shares and proportions, and at such time or times as the said Richard Vassall shall think fit, and to make any lease or leases, mortgage or mortgages, of the same premises, or any part thereof, for the raising and paying such sum and sums of money as shall be charged as aforesaid, and that the same premises so to be leased or mortgaged, shall stand charged and chargeable with such sum and sums of money respectively, and with such demises or mortgages, to be made as aforesaid for raising or securing the same, so as such charge or charges so to be made by the said Richard Vassall, be likewise subject, and without prejudice, to any of the trusts herein declared of and concerning the said term of five hundred years. And yet, so, nevertheless, as that the portion for any one daughter do not, or shall not, exceed the value of the sons' respective shares in the said estates, such value to be ascertained and fixed by the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, or the survivors or survivor of them, or the heirs of such survivor; provided, always, and my further will is, that all and every person and persons to whom my said plantations and estates shall come or descend by virtue of this my will, or of any devise or limitation herein contained, shall and do, when and so soon as they shall respectively come into the actual possession thereof, or any part thereof, take and forever afterwards, upon all occasions, use the sirname of Vassall, only next and immediately after their own and respective christian names, and in default or neglect thereof by any of them, being of the age of twenty-one years, the said devise or limitation of my said estates to such person so refusing or neglecting, shall immediately, upon such refusal or neglect, go to, and become vested in, the person or persons who would be next entitled thereto under this my will, in case the person or per-

sons so refusing or neglecting was naturally dead; provided, likewise, and my further will is, that it shall and may be lawful to and for the said George Barrington, Richard Barrington, William Barrington, and Rose Hering May, respectively, as and when they shall respectively come into, and be in the actual possession of the premises hereinbefore devised, or any part thereof, by any deed or writing, or deeds or writings, under their respective hands and seals, attested by two or more credible witnesses, to grant, limit, or appoint, unto or to the use of any woman or women with whom they shall respectively intermarry, either before or after such marriage, for the life or lives of such woman or women, in the nature of a jointure or jointures, or in part of a jointure for her or them, any rent or annual sum, tax free, and without any deduction, to be issuing out of and chargeable upon all or such part of the said plantations, lands, tenements, negro and other slaves, hereditaments, and premises, whereof they shall respectively be so then in the actual possession, and to be paid quarterly on the four most usual feasts or days of payment in the year, and with powers and remedies for the recovering such rent or annual sum when in arrears, and such term of years, for better securing the due payment thereof, as to them respectively shall seem meet, so that such grant, limitation, and appointment, be made with the approbation and consent in writing of the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, or the survivors or survivor of them, or the heirs of such survivor. Yet so, nevertheless, as that the same do not, or shall not, exceed the amount of one-third part of the usual nett yearly produce of the estates then in their respective possession, such annual value to be ascertained and fixed by the said last mentioned trustees for the time being, and so that not more than one such yearly rent or annual sum be subsisting at one and the same time. And I give and devise unto my brother-in-law, John Foster Barham, esquire, and the sons of my late brothers-in-law, William Foster and Samuel Foster, deceased, or such of them as at the time of my decease shall be seized of, or entitled to the plantations or sugar works hereinafter mentioned, severally and respectively, and to their several and respective heirs and assigns, forever, all such and so much of my lands in the parish of Saint Elizabeth, in the said island of Jamaica, as are adjoining, or near unto, and within the compass or distance of one mile from all or any the several estates and sugar works of my said brothers-in-law and nephews, respectively called Elm Dawkins, Lancaster Two Mile Wood, and the Island, such and so much thereof (if any such there be) as lies adjoining or near unto any two or more of the said five several estates or sugar works, to be equally divided between such of my said brothers-in-law or nephews, to whom such estates or sugar works shall respectively belong; and in case any of them shall die in my lifetime, then I give the part and share, parts and shares, of him or them so dying unto his or their heirs forever. And I give all the diamonds and trinkets of my late wife unto my said son, Richard Vassall, in trust for his daughters begotten, or to be equally divided between them

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if more than one, share and share alike; or if there shall be but one such daughter, then the whole to such only daughter; and in case this gift shall not be altered by me by any codicil, then I desire my son, Richard Vassall, to pay to the said Hester Deere and her children, in such shares and proportions as he in his discretion shall think fit, the sum of five hundred pounds, by five instalments of one hundred pounds each, yearly. And I give unto the said Hugh, Lord Viscount Falmouth, one hundred guineas for a ring, which I beg his lordship's acceptance of. And I nominate and appoint the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, executors of this my will. And I do desire the said William Wildman, Lord Viscount Barrington and Charles Spooner to accept of the sum of fifty pounds each for a ring.

And as to all the rest and residue of my personal estate, not hereinbefore specifically devised, which shall remain after payment of my debts and funeral expenses, and such legacies as I have given by this my will, or as I shall at any time or times hereafter give by any codicil or codicils thereto, I give and bequeath the same, and all my estate, right, and interest therein, unto and to the use of my said son, Richard Vassall, to and for his own absolute use and benefit forever. And my will further is, and I declare and direct, that the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, Charles Spooner, William Dickenson, and William Smith, or any of them respectively, their or any of their respective heirs, executors, administrators or assigns, shall not be charged with, or answerable or accountable for, any sum or sums of money whatsoever, other than such only as by virtue of, or in pursuance of this my will, shall be actually received by, or come to their or his hands respectively, and shall not be answerable or accountable the one for the other or others of them, or for the receipts, payments, acts or wilful defaults of the other or others of them, but each of them for himself and for his own receipts, payments, acts, and wilful defaults only, their joining in any receipt or receipts for the sake of conformity notwithstanding, or with *or with* or for any loss or damage which may happen by or through the neglect, default or failure of any attorney or attorneys, manager or managers, as shall be so employed, authorized, or empowered as aforesaid, or by depositing any sum or sums of money or effects which by virtue of this my will shall come to their or any of their hands in any bank or banker's or merchant's hands, or elsewhere for safe custody, or for any loss or damage which may happen in or about or relating to the said trusts or powers, or any of them, or the management or execution thereof, or the executorship of this my last will, without his or their wilful neglect or default; and they, the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, Charles Spooner, William Dickenson, and William Smith, and every of them, their and every of their executors, administrators and assigns respectively, may from time to time deduct and retain in his or their hands, and reimburse him and themselves, and pay to his and their co-trustee and trustee respectively, out of all or any of the

moneys which by virtue of this my will, or any of the trusts or powers aforesaid, shall be received by or come to their or any of their hands respectively, all such costs, charges, damages, and expenses as he or they or any of them shall pay, sustain, or be put unto, in or about, or relating to any of the trusts or powers aforesaid, or otherwise by reason of this my will. And lastly, I do revoke and make void all former wills or testamentary dispositions by me at any time heretofore made, and declare this only to be my last will and testament. In witness whereof I, the said Florentius Vassall, have hereunto, and also to a duplicate hereof, set my hand and seal the day and year first above written.

FLO. VASSALL. [SEAL.]

Signed, sealed, published and declared, by the said Florentius Vassall, the testator, as and for his last will and testament, in the presence of us, whose names are hereunder written, who, in his presence and in the presence of each other, do attest the same.

THOMAS GOOSTREY.

GEORGE BURLEY,
LUKE HEPWORTH,
Clerks to Mr. Goostrey.

10*th September*, 1778.

Appeared personally Thomas Goostrey, of Shenard street, in the parish of Saint James, Westminster, in the county of Middlesex, esquire, and being sworn on the holy evangelists, made oath as follows: That he is one of the subscribing witnesses to the last will and testament of Florentius Vassell, formerly of the parish of Saint Marylebone, in the county of Middlesex, but late of the island of Jamaica, in the West Indies, esquire, deceased; and having now carefully viewed the several obliterations and interlineations now appearing in the said will, to wit, the obliterations on the 11th, 12th, 13th, 21st, 22d, 23d, 24th, 32d, and thirty-third lines of the second sheet of the said will; the word "and" interlined between the 31st and 32d lines of the same sheet: the obliterations in the 2d, 3d, 14th, and thirtieth lines of the third sheet; the word "Hugh" interlined between the 17th and 18th lines of the same sheet: the word "so" interlined between the 10th and 11th lines of the 8th sheet: the word "and" interlined between the 14th and 15th lines of the 9th sheet; the obliterations in the 15th and 16th lines of the same sheet; the word "after" wrote over the word "before" in the thirty-third line of the same sheet: the words "or by any other ways or means" inserted over the first line of the 12th sheet; and the word "such" interlined between the 14th and 15th lines of the same sheet: the word "that" interlined between the 10th and 11th lines of the 13th sheet; the word "other" interlined between the 22d and 23d lines of the same sheet: the word "one" wrote over the word "two" obliterated in the 19th, 24th, 27th, 30th, 31st, and 35th lines of the 14th sheet: the word "one" wrote over the word "two" obliterated in the 2d and 5th lines of the fifteenth sheet; the

word "two" wrote over the word "four" obliterated in the third line of the same sheet; and the word "eighty" wrote over the words "one hundred" obliterated in the same sheet: the word "subject" interlined between the fourth and 5th lines of the 16th sheet: the word "and" interlined between the 8th and 9th lines; the obliteration in the said 8th and 9th lines; the word "four" wrote over the word "five" obliterated in the 14th line; and the word "pounds" interlined between the 13th and 14th lines of the 18th sheet: and the obliteration in the 17th, 18th, 19th, 20th, and 22d lines of the 20th sheet of the said will: he, the *the* appearer, saith that the said obliterations and interlineations were severally and respectively made previous to and before the execution of the said will by the said deceased, and that the said will is now in the same plight and condition as when the same was executed by the said deceased, as he verily believes. And the appearer further saith, that he was present on the 20th day of September, in the year of our Lord 1777, being the day of the date of the said will of the said deceased, and did see the said deceased sign his name thereto, and seal and publish and declare the same as and for his last will and testament, as well in the presence of the deponent as of George Burley and Luke Hepworth, the other subscribing witnesses to the said will, who then and there, together with the appearer, did, at the request of the said deceased, sign their names as witnesses to the said will in the presence of the said testator and of each other, in manner and form as therein now appears.

And the appearer lastly saith, the said Florentius Vassall, esquire, the testator, was, at and during the whole premises by him before set forth, of perfect, sound, and disposing mind, memory, and understanding.

THOMAS GOOSTREY.

Same day the said Thomas Goostrey, esquire, was duly sworn to the truth of this affidavit before me.

F'S SIMPSON, *Surrogate*.

Present: HENRY STEVENS, *Not. Pub.*

In faith and testimony of all and singular which premises, we have caused these our present letters testimonial to issue, and be corroborated and confirmed, by affixing thereto the seal of our prerogative court of Canterbury, which we use in this behalf.

Given at London, as to the time of the aforesaid search and sealing these presents, this ninth day of June, in the year of our Lord one thousand eight hundred and thirty-six, and in the eighth year of our translation.

CHAS. DYNELEY,
JOHN IGGULDEN,
W. F. GOSTLING,
Deputy Registers.

Extracted by—

ARTHUR LOVEDAY,
Proctor, Doctors Commons.

In the prerogative court of Canterbury, in the goods of Florentius Vas-
[SEAL.] sall, esquire, deceased.

(Stamp.)—Appeared personally Petty Vaughan, formerly of Hallowell, in the State of Maine, U. S. A., and now of No. 70, Fenchurch street, in the city of London, merchant, and John Milton, of Doctors Commons, in the said city of London, clerk to Arthur Loveday of the same place, proctor, and jointly and severally made oath as follows: And first, the said John Milton, for himself, made oath that he has, with care and attention, examined the several skins of parchment, being eleven in number, now hereto annexed, (containing an exemplification of the letters of administration, with the last will and testament annexed, of all and singular the goods, chattels, and credits of Florentius Vassall, formerly of the parish of Saint Marylebone, in the county of Middlesex, but late of the Island of Jamaica, esquire, deceased,) with the original will of the said deceased, now remaining on record in the prerogative court of the Lord Archbishop of Canterbury, being the supreme court of probate in England; and which letters of administration, (with the will annexed,) were, on the fourteenth day of September, in the year of our Lord one thousand seven hundred and seventy-eight, granted and committed under seal of the said court to Richard Vassall, esquire, the son and residuary legatee named in the said will. The Right Honorable Hugh, Lord Viscount Falmouth, the Right Honorable William Wildman, Lord Viscount Barrington, and Charles Spooner, esquire, the executors named in the said will, having renounced the probate and execution thereof. And the said John Milton, for himself, further made oath, that the said exemplification doth contain a true and faithful copy of the said original will. And the said Petty Vaughan and John Milton, for themselves, jointly made oath that, on the ninth day of June instant, they attended in the registry of the prerogative court of the said Lord Archbishop of Canterbury, and did there see William Frederick Gostling, esquire, one of the deputy registrars of the said court, and to this deponent, John Milton, as he further said, well known; that the said William Frederick Gostling did then and there, in the presence of both the said deponents, acknowledge himself, and also Charles Dyneley, esquire, and John Iggulden, esquire, to be the deputy registrars of the said court; and did also, in their presence, duly sign the said exemplification by subscribing thereto the names "Chas. Dyneley, John Iggulden, W. F. Gostling, deputy registers," in the usual and authorized manner, as now appears thereon. And the deponents further said, that they did afterwards see the said exemplification duly sealed with the seal of the said prerogative court, and that such court exercises jurisdiction over the probates of wills, and letters of administration with wills annexed, or otherwise, of persons dying possessed of personal property within the province of the said Lord Archbishop of Canterbury; and that such letters of administration with the will annexed, of the goods of the said Florentius Vassall, deceased, were accordingly granted by due and competent authority.

And the deponents lastly said, that Arthur Loveday, by whom the said exemplification has been extracted, is a proctor, practising in the said prerogative court of Canterbury, and in consequence thereof a person duly qualified to extract the same under the seal of the said court.

PETTY VAUGHAN,
JOHN MILTON.

Sworn at the Mansion House, this tenth day of June, in the year 1836. Before me,

W. T. COPELAND, *Mayor*.

CONSULATE OF THE UNITED STATES OF AMERICA, *London:*

I, Thomas Aspinwall, consul of the United States of America for London, and the dependencies thereof, do hereby make known and certify, to all whom it may concern, that the Right Honorable William Taylor Copeland, before whom the foregoing affidavit was made, as appears by his signature thereto, is Lord Mayor and Chief Magistrate of the city of London aforesaid, and that to all acts by him so done full faith and credit are and ought to be given in judicature and thereout.

In testimony whereof I have hereto set my hand and affixed the seal of the consulate of the United States, in London aforesaid, this tenth day of June, in the year of our Lord one thousand eight hundred and thirty-six, and in the sixtieth year of the independence of the said United States.

[SEAL.]

THOS. ASPINWALL.

STATE OF MAINE, *Kennebec county, ss:*

I, Joseph J. Eveleth, register of the court of probates in and for said county of Kennebec, hereby certify, that the foregoing manuscript, consisting of thirty-four pages, is a true copy from the records of said court, and that said manuscript is a copy of all that appears of record in the office of said court touching the will of the said Florentius Vassall, deceased.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court of probate, at Augusta, in said county, this eleventh day of October, in the year of our Lord one thousand eight hundred and thirty-eight.

[SEAL.]

JOSEPH J. EVELETH.

Circuit court of the United States. Maine district, ss. October Term, 1847.

HENRY WEBSTER,
vs.
PETER COOPER.

This cause came on at this term, to be heard and tried on the annexed agreed statement of facts.

Whereupon, the following questions occurred:

First. Whether, by the will of Florentius Vassall, read in evidence by the plaintiff in this case, the fee simple in the demanded premises

was devised to Lord Falmouth, Lord Barrington, and Charles Spooner, and their heirs; and the legal estate was conveyed to, and remains in them, or their heirs.

Second. Whether, by the will of Florentius Vassall, Elizabeth Vassall took an estate for life.

Third. Whether the demandant, by the terms of the devise, became entitled to an estate of inheritance in the premises demanded, to him and his heirs in tail male, and remainder subject to the life estate of said Elizabeth, and is now (upon her death) entitled to enter as tenant in tail, and recover such estate in tail and remainder.

Fourth. Whether the present action can be maintained by this plaintiff, he having sufficient interest and title therefor.

Fifth. Whether Elizabeth Vassall, named in said will, and the mother of said plaintiff, by the terms and by the force of said will, took as devisee an estate tail?

Sixth. Whether the right and claim of said Elizabeth was barred by the statute of limitations of Massachusetts, and also by the statute of limitations of the State of Maine.

Seventh. Whether the plaintiff's right and claim, if any he ever had, was as heir to his mother Elizabeth; and whether all his right, if any he had, was, by the words and terms of said will, an estate of limitation, or of purchase.

Eighth. Whether all the right and claim of said plaintiff is barred by the statute of limitations of the State of Massachusetts, and the statute of limitations of the State of Maine.

Ninth. Whether the plaintiff, according to the provisions of said will, could maintain this action, he not having taken the sirname of Vassall.

Tenth. Whether, under the declaration in the writ in this case, the plaintiff could, by law, recover a moiety of the premises sued for as of an estate tail.

Eleventh. Whether the rule of estimation of the value of the premises demanded, had no buildings and improvements been made thereon by said tenant, shall be the same as though the plaintiff demanded an estate in fee simple, waiving any question whether, under our treaties with Great Britain, the present tenant is entitled to recover any thing for buildings and improvements.

Upon which questions the judges of the said circuit court were opposed in opinion; and thereupon, upon the motion of Frederick Allen, Fessenden, Deblois, and Fessenden, attorneys for and in behalf of the said Peter Cooper, the defendant, it was ordered by the court that the said questions, upon which the said judges were so opposed, should be certified under the seal of the court to the Supreme Court of the United States, at their next session, for a final decision.

LEVI WOODBURY,
Ass. Jus. of Sup. Court.
ASHUR WARE,
Dist. Judge.

UNITED STATES OF AMERICA,
Maine district, ss:

I, John Mussey, clerk of the circuit court of the United States for the first circuit for Maine district, do hereby certify to the honorable the Justices of the Supreme Court of said States, the foregoing questions, with the statement of facts accompanying the same, agreeably to the order of the judges of said circuit court, passed at October term of said court, A. D. eighteen hundred and forty-seven.

In testimony whereof I have hereunto set my hand, and affixed the seal of said circuit court, at Portland, this ninth day of November, in the year of our Lord one thousand eight hundred and forty-seven.

[SEAL.]

JOHN MUSSEY.

Filed 27th December, 1847.